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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON WILLIAM BURTON,

Defendant and Appellant.

B293761

(Los Angeles County
Super. Ct. No. TA039158)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

John F. Schuck, under appointment by the Court of Appeal; and Jason William Burton, in pro. per., for Petitioner and Appellant.

No appearance for Plaintiff and Respondent.

Jason William Burton filed a “motion for modification of sentence” under Senate Bill No. 620, which granted trial courts discretion to strike firearm enhancements imposed under Penal Code section 12022.53,¹ and Senate Bill No. 260, which added section 3051, providing for youthful offender parole consideration. The trial court treated Burton’s motion as a petition for writ of habeas corpus and denied the petition. Burton appealed.

We appointed counsel to represent Burton on this appeal. After review of the record, Burton’s counsel filed an opening brief requesting this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On April 16, 2019, we sent a letter to Burton, advising him that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. On May 10, 2019, Burton filed a supplemental opening brief containing issues he wished us to consider.

DISCUSSION

Pursuant to a plea agreement, on December 2, 1998 Burton was convicted of attempted murder (§§ 187, subd. (a), 664) with a firearm use enhancement (§ 12022.53, subd. (d)). The February 16, 1999 minute order and abstract of judgment reflected that the trial court sentenced Burton to the low term of five years for the attempted murder and 25 years for the firearm use, for a total term of 30 years.

In 2018, Burton filed a motion to withdraw his plea on the ground he agreed to a sentence of 30 years, not 30 years to life.

¹ All further statutory references are to the Penal Code.

On March 14, 2018, the court denied Burton's motion. However, it found that "the minute order and abstract issued on February 16, 1999 does not properly reflect the court's sentence and order[ed] said minute order and abstract to be corrected." A corrected abstract of judgment filed on March 23, 2018 reflects a five-year term for the attempted murder and a term of 25 years to life for the firearm use. Burton appealed; we affirmed. (*People v. Burton* (Oct. 30, 2018, B290064) [nonpub. opn..])

While the appeal was pending, on August 13, 2018, Burton filed the current motion for modification of his sentence. The trial court treated this motion as a petition for writ of habeas corpus and, on September 17, 2018, denied the petition.

As the trial court explained, effective January 1, 2018, Senate Bill No. 620 added subdivision (h) to section 12022.53; this subdivision allows a court to exercise its discretion to strike or dismiss a section 12022.53 firearm enhancement at the time of sentencing or resentencing. This legislation applies retroactively to all cases not yet final as of January 1, 2018. (*People v. Billingsley* (2018) 22 Cal.App.5th 1076, 1080.) Since Burton's case is final, he is not entitled to the benefit of Senate Bill No. 620.

In 2013, the Legislature enacted Senate Bill No. 260, which added section 3051; this section provided that "[a] person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions." (Former § 3051,

subd. (b)(3); Stats. 2013, ch. 312, § 4.) In 2015, the Legislature amended the section to apply to a person who committed his or her crime before attaining the age of 23, effective January 1, 2016. (Stats. 2015, ch. 471, § 1.) The Legislature amended section 3051 again in 2017 to extend its reach to those who were 25 years old or younger, effective January 1, 2018. (Stats. 2017, ch. 675, § 1; Stats. 2017, ch. 684, § 1.5.) Subdivision (b)(3) of section 3051 provides: “A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.”

According to the trial court, records from the California Department of Corrections and Rehabilitation (CDCR) indicated that Burton already had a parole suitability hearing on June 28, 2017. The Board of Parole Hearings denied parole.² The trial court correctly found that because Burton received a parole consideration hearing earlier than his 25th year of incarceration, section 3051 affords him no relief. (§ 3051, subd. (b)(3).)

In his supplemental brief, Burton challenges the correction of the abstract of judgment in this case to reflect a sentence of 30 years to life, rather than 30 years. We have already upheld the

² A new parole suitability hearing was scheduled for January 3, 2019. We assume parole was again denied, as Burton’s supplemental brief states that he is currently incarcerated in Folsom State Prison.

order for correction on appeal. It is the law of the case; we cannot reconsider it. (*People v. Barragan* (2004) 32 Cal.4th 236, 246.)

Burton also appears to claim he was deprived of the effective assistance of counsel at the original plea proceedings. That issue is not before us. We consider only the issues raised by the order from which this appeal was taken (see *Faunce v. Cate* (2013) 222 Cal.App.4th 166, 170; *People v. Le Gerrette* (1966) 245 Cal.App.2d 764, 765-766): whether the amendments to section 12022.53 and section 3051 afford any relief to Burton. They do not.

We have examined the entire record. We are satisfied that no arguable legal issues exist and that Burton's counsel has fully complied with his responsibilities. By virtue of counsel's compliance with the *Wende* procedure and our review of the record, we are satisfied that Burton received adequate and effective appellate review of the order entered against him in this case. (*People v. Wende, supra*, 25 Cal.3d at p. 441; accord, *People v. Kelly* (2006) 40 Cal.4th 106, 109-110.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.